STATE OF CALIFORNIA PETE WILSON, *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

March 1, 1996

VIA FEDERAL EXPRESS

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20036

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Re: In the Matter of Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers
CC Docket No. 95-185

Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Service Providers
CC Docket No. 94-54

Dear Mr. Caton:

Please find enclosed for filing an original plus eleven copies of the COMMENTS OF THE PEOPLE OF THE STATE OF CALIFORNIA AND THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA ON THE SECOND FURTHER NOTICE OF PROPOSED RULEMAKING in the above-referenced proceeding.

Also enclosed is an additional copy of this document. Please file-stamp this copy and return it to me in the enclosed, self-addressed, postage pre-paid envelope.

If you have any questions, please call the undersigned at (415) 703-1952.

Very truly yours,

Mary Mack Adu

Mary Mack Adu
Attorney for CPUC

MMA:nas

Enclosures

ORIGINAL

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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PETER ARTH, JR.
EDWARD W. O'NEILL
MARY MACK ADU

505 Van Ness Avenue
San Francisco, CA 94102
(415) 703-1952

Attorneys for the People of the State of California and the Public Utilities Commission of the State of California

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COMMENTS OF THE PEOPLE OF THE STATE OF CALIFORNIA AND THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA ON THE SECOND FURTHER NOTICE OF PROPOSED RULEMAKING

The People of the State of California and the Public Utilities Commission of the State of California ("California" or "CPUC") hereby respectfully submit their comments on the notice of proposed rulemaking ("NPRM") regarding interconnection between local exchange carriers ("LECs") and commercial mobile radio service providers ("CMRS").[1]

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1. The pleading cycle for the filing of comments has been modified by an Order and Supplemental Notice of Proposed Rulemaking adopted on February 16, 1996 in response to the passage of the Telecommunications Act of 1996, and upon motions by NARUC and GTE requesting an extension of time (FCC 96-61). The revised date for filing comments is March 4, 1996, and the due date for reply comments is March 25, 1996.

INTRODUCTION AND SUMMARY

In its NPRM and Supplemental NPRM, the Commission focuses on the compensation arrangements between LECs and CMRS providers. It is concerned that existing interconnection policies may not do enough to encourage the development of CMRS, noting that if CMRS providers are to compete directly against LEC wireline services, it is important that the prices, terms, and conditions of interconnection arrangements not serve to buttress LEC market power against erosion by competition. NPRM, ¶2. The Commission tentatively concludes that interconnection rates for local switching facilities and connections to end users should be priced on a "bill and keep" basis, at least on an interim basis, and that rates for dedicated transmission facilities provided by LECs to connect LEC and CMRS networks should be set based on existing access charges for similar transmission facilities. It also concludes that information about interconnection compensation arrangements should be made publicly available. The Commission further concludes that it has the authority to adopt any of three approaches in implementing its conclusions.[2]

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2. The three alternative approaches considered by the Commission are: (1) the informal model - the Commission would give guidance to the states and recommend that they voluntarily follow Commission guidelines (NPRM, ¶108); (2) mandatory federal policy framework - the Commission would set general mandatory parameters to govern interconnection between LECs and CMRS with respect to interstate and intrastate services (Id. at ¶109); (3) specific federal requirements for interstate and intrastate LEC-CMRS interconnection arrangements - the Commission would set more specific parameters on the states with regard to interconnection rates (Id. at ¶110).

The CPUC's comments will describe LEC-cellular interconnection arrangements in California, explain California's policy toward LEC-competitive local carrier interconnection and argue for a continued state role in LEC-CMRS interconnection regulation. California's policy toward interconnection between LECs and new entrants, known as competitive local carriers ("CLCs") in CPUC proceedings, is evolving. The treatment of CMRS under this new regime is still under consideration in formal proceedings by the CPUC. For this reason, these comments will explain California's interconnection policies and the reasons for them. In addition, the CPUC's comments will address why the informal model considered by the Commission is preferable to the other approaches in implementing the Commission's LEC-CMRS interconnection policies.

I. Existing LEC-Cellular Interconnection Arrangements in California

In the NPRM, the Commission asks a series of detailed questions on existing LEC-CMRS interconnection arrangements. In response to these questions, the CPUC will provide information on its treatment of LEC-cellular interconnection. The CPUC is currently reviewing its policy toward LEC-CMRS interconnection in the context of its ongoing local exchange competition proceeding.[3] California's comments will describe the LEC-Cellular interconnection policy, explain how this policy has

3. Order Instituting Investigation/Rulemaking (OII/R) 95-04-043, 95-04-044.

evolved, and illustrate some of the distinctive features of LEC-cellular interconnection.

In California, LEC-CMRS interconnection arrangements are negotiated, not tariffed. The CPUC has directed that these contracts should contain standard terms and conditions, options for various serving arrangements and pricing structures, and be offered on a non-discriminatory basis.[4] A standard contract has developed. These contracts are submitted to the CPUC, and are available for review. The contracts allow a variety of specific interconnection arrangements.

As the NPRM notes, in earlier comments in this docket the CPUC has supported tariffs for LEC-CMRS interconnection.[5] The reason for this position was to ensure non-discriminatory treatment of CMRS providers. At the time, the CPUC was considering establishing an intrastate tariff for LEC-CMRS interconnection. Since those comments were filed, the CPUC has developed a new policy for LEC-CLC interconnection which may be appropriate for LEC-CMRS interconnection. This approach will be discussed further below.

The CPUC has never established cellular interconnection rates. The CPUC has directed that these rates should be cost-based. In practice, these negotiated, cost-based rates have been based on the LEC's cost of providing interconnection to Interexchange Carriers (IECs). For example, the call termination

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4. Decision (D.) 90-06-025. Conclusion of Law 24.

5. FCC 95-505, footnote 99.

rate that is common to all Pacific Bell-cellular interconnection contracts was based on Pacific Bell's switched access charges, excluding inappropriate non-traffic sensitive elements. The cellular carrier pays separate rates for terminating traffic on the LEC's network and for the LEC terminating traffic on its network.

In California, there may be a substantial traffic imbalance between LECs and cellular carriers. As the NPRM notes, Pacific Bell reports that a disproportionate amount of LEC-CMRS exchange traffic terminates on Pacific Bell's network. One possible reason for this lopsided traffic flow is a combination of airtime charges and the arrangement whereby the cellular customer always pays for airtime. Another reason for the imbalance may lie in the characteristics of mobile telephone use.

In California, the cellular user pays all airtime charges whether they are the calling party or the called party. This departs from the arrangement typical of most other telecommunications services, such as toll, where the "calling party pays" for charges. Many cellular consumers have an incentive to restrict incoming calls by limiting the distribution of their cellular numbers. The practice of accepting incoming calls on a pager and using a cellular phone for outgoing calls has evolved to give the cellular user control over their airtime costs. While airtime charges and "called party pays" combine to create traffic imbalances, it is difficult to disaggregate these two effects. If the calling party paid for airtime charges, there would be a reduced incentive to restrict the distribution of cellular numbers; however, wireline customers would then have a direct incentive to limit the number and duration of calls to cellular phones to avoid airtime charges.

Inherent characteristics of mobile telephony may also lead to traffic imbalance. For example, to preserve battery power many cellular customers turn their phones off when they are not making a call or expecting a particular call. This limits the access wireline callers have to them.

In California, existing airtime billing arrangements may affect the implementation of reciprocal compensation. A shift to reciprocal compensation may result in a shift to a calling party pays system. Under this arrangement, wireline customers would be charged for airtime. This could be considered raising the price of basic service as, for the first time, a wireline customer making a strictly local call would be billed for airtime charges. In a 1990 Decision, the CPUC rejected mutual compensation because this would lead to a calling party pays system which in turn would lead to an increase in the cost of basic telephone service for the provision of discretionary cellular service.[6] At the time, the CPUC was concerned that wireline customers would incur airtime charges with no notice.

California had intended to reexamine LEC-cellular interconnection when cellular subscribership has risen and traffic exchange has become more equal.[7] Market developments since 1990 may indicate that the treatment of wireless

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6. Decision (D.) 90-06-025, page 65.

7. D. 90-06-025, p. 67.

interconnection should be reevaluated. Since 1990, cellular subscribership has grown rapidly and new services such as Personal Communications Services (PCS) should reach an even broader market. In addition, wireless service may become a substitute for the wireline local loop for providing basic service. Also, it may be possible to notify wireline carriers on a per call basis that they will receive airtime charges for calls to wireless telephones.

II. California's Intrastate Interconnection Arrangements Between LECs and New Entrants

The Commission asks for comment on state approaches toward LEC-new entrant interconnection arrangements. In response to this question, the CPUC will describe the interconnection policy adopted in Decisions 95-07-054 and 95-12-056. (A copy of D.95-12-056 is attached to these Comments.) The key features of the interconnection arrangements adopted in these orders are interim bill and keep for recovery of call termination costs, and a "preferred outcome" negotiated contract arrangement for interconnection agreements. These rules apply to all facilities-based CLCs. No applications for CMRS are pending.[8] In addition, interconnection agreements for CLCs can take place outside of this framework.

As the Commission noted in the NPRM,[9] California has

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8. A handful of cellular carriers applied for facilities-based CLC authority, but have since withdrawn their applications.

9. FCC 95-505, footnote 26.

adopted bill and keep as an interim arrangement for the recovery of call termination costs for one year. At the conclusion of this period, the CPUC will determine whether to continue to use bill and keep or adopt a mutual compensation system where LECs and CLCs charge one another for the termination of local traffic. There are two reasons for this interim decision: (1) insufficient data on the cost of terminating local traffic, and (2) uncertainty that traffic flows would be sufficiently unbalanced to warrant costly billing procedures. As the Commission notes, one of the considerations in evaluating whether bill and keep is appropriate is traffic balance.[10] For this reason, the CPUC plans to monitor traffic flows by having LECs and CLCs measure traffic and exchange results on a percentage of local usage (PLU) basis and having an independent group review traffic patterns.[11] This monitoring plan may have to be reevaluated to ensure that it is consistent with the Act of 1996.

In the NPRM, the FCC states that California, among other states, requires prospective entrants to satisfy certain universal service and other obligations to qualify for low interconnection rates. NPRM at ¶23. To clarify, California's local competition rules offer bill and keep to all CLCs as well as establish certain consumer protection, service quality and universal service obligations. (See Appendix C of attached Order D.95-12-056.) The CPUC's rules do not specify distinct, lower

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10. FCC 95-505, para 61.

11. D.95-05-056, Ordering Paragraph 5.

interconnection rates if certain obligations are met. The local competition rules include bill and keep interconnection as part of a package of arrangements governing the relationships among carriers and between carriers and their customers.

The CPUC has opted to allow LECs and CLCs to negotiate interconnection contracts under CPUC guidelines rather than to tariff interconnection arrangements. The CPUC arrived at this conclusion after weighing many of the issues the Commission is considering, such as the early imbalance of negotiating power between LECs and competitors, the need to protect against discriminatory practices, the need for flexibility and the desire to accommodate rapid technological change.[12] The principal reason for the choice of negotiated contracts was to allow greater flexibility in interconnection agreements and to avoid lengthy deliberation over interconnection tariffs. The CPUC expects contracts to lead to more efficient use of interconnection facilities and to allow more rapid deployment of new technologies.[13] The structured negotiation approach adopted by the CPUC was advocated by new entrants. In addition, the CPUC's negotiated interconnection agreement approach is consistent with Section 252 of the Telecommunications Act of 1996 ("Act of 1996").

To neutralize imbalance in negotiating power, expedite the agreement process and to protect against discriminatory

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12. FCC 95-505, para 88-93.

13. D.95-12-056, page 14.

practices, the CPUC has specified "preferred outcomes" and established an expedited contract approval and dispute resolution process. The preferred outcomes represent the technical features that are expected to lead to the most efficient and economic interconnection agreements. An example of one of these preferred outcomes is two way trunking.[14] The CPUC chose two way trunking as a preferred outcome because this arrangement is expected to be more efficient for CLCs during the start-up period and more flexible. These preferred outcomes are not meant to exclude other mutually agreeable arrangements. If parties agree to other arrangements, these will be approved using the same expedited process. Major departures from the preferred outcomes will be reviewed on a standard, non-expedited basis.

Interconnection agreements must be filed with and approved by the CPUC. The CPUC staff reviews these agreements to ensure that they are not unduly discriminatory or anticompetitive. Parties have seven days to protest agreements solely on the grounds that they are discriminatory or anticompetitive. Contracts will go into effect in 14 days, unless the Commission finds them unduly discriminatory or anticompetitive. If parties include other intercarrier arrangements beyond the scope of interconnection, they will not be handled on an expedited basis. The Commission has also established an expedited dispute

14. D.95-12-056, page 26. A complete list of preferred outcomes is contained in Appendix A of D.95-12-056.

resolution process to ensure that parties negotiate promptly and in good faith.

The preferred outcome interconnection negotiation process has proved successful since its inception in January 1996. An interconnection agreement between Pacific Bell and Teleport Communications Group ("TCG") has been adopted using this process. Several similar agreements are being negotiated.

California also allows interconnection agreements outside of the framework described above. One such agreement between Pacific Bell and MFS has been approved by the CPUC subject to certain amendments. The Commission noted the Pacific Bell-MFS agreement's reciprocal call termination rate of 0.75 cents per minute.[15] According to the parties to this agreement, this rate is equivalent to the per minute cost of switched access service at California intrastate rates. In addition to interconnection arrangements, the Pacific Bell-MFS agreement includes provisions beyond the scope of the network interconnection arrangements covered by D.95-12-056, such as access to unbundled links.

III. Applicability of California's LEC-New Entrant Interconnection Policy to CMRS

The Commission asks whether there is any technical or economic basis for distinguishing CMRS from wireline interconnection. One concern in applying bill and keep to CMRS is the demonstrable lack of traffic balance between LECs and

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15. FCC 95-505, para 71.

cellular carriers. While current interconnection arrangements may contribute in a small way to the existing traffic imbalance between LECs and cellular, they cannot explain the entire disparity. Other forms of CMRS, namely Personal Communications Services, may have lower airtime charges and other characteristics which reduce this imbalance. The Commission identifies two conditions one of which must hold for bill and keep to be an efficient arrangement: (1) traffic is balanced, or (2) interconnection costs are close to zero.[16] If evidence from the cellular industry suggests that the first condition does not hold and that traffic imbalances are substantial, then the Commission must rely on the notion that call termination costs are negligible. California has not yet solicited evidence to indicate that call termination costs are negligible in its local competition proceeding. The CPUC agrees with the Commission that traffic balance and interconnection costs should be considered when determining whether bill and keep should be used in the long term.

California believes the structured negotiation approach to interconnection it has adopted for LEC-CLC interconnection may be appropriate for LEC-CMRS interconnection. This approach should mitigate imbalances in negotiating power, prevent discriminatory treatment of certain carriers while allowing sufficient flexibility and accommodating the deployment of new technology.

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16. FCC 95-505, para 61.

The CPUC's approach is also consistent with the procedures for interconnection agreements established by the Act of 1996.

IV. **Jurisdictional Issues**

The Commission tentatively concludes that it has sufficient authority to implement any of three alternative approaches to implementing federal interconnection policies. NPRM, ¶111. The first alternative consists of states voluntarily following the Commission's guidelines concerning interstate services which would serve as a model for state commissions with respect to intrastate services. Id. at ¶108. The second approach would be to adopt a mandatory federal policy framework to govern interconnection arrangements between LECs and CMRS providers with respect to interstate and intrastate services, but allow states a wide range of choices in implementing specific elements of these arrangements. Id. at ¶109. The third alternative would be to promulgate specific federal requirements for interstate and intrastate LEC-CMRS interconnection arrangements. Id. at ¶110.

The Commission seeks comment on the meaning and relevance of Section 332(c)(1)(B) of the Omnibus Reconciliation Budget Act ("Budget Act") to its jurisdictional analysis. NPRM, ¶113. The Order and Supplemental Notice adopted on February 16, 1996 asks that comments include the extent to which Act of 1996 may affect the jurisdictional discussion of questions posed in ¶¶96-114 of the Notice. Accordingly, the CPUC's response to the Commission's jurisdictional analysis will include a discussion of that legislation.

A. **The First Option is the Best Alternative Approach.**

Of the three alternative approaches to implementing federal interconnection policies, California supports the Commission's first option, namely establishing a framework that would serve as a model for state commissions with respect to intrastate services.[17] The CPUC believes that the first alternative approach is preferable, and is more in tune with the legislative intent of the Budget Act and the Act of 1996 which preserve state jurisdiction over intrastate LEC-CMRS interconnection. By providing for voluntary state guidelines, rather than mandatory requirements, the Commission paves the way for greater flexibility and efficiency in fashioning a coordinated national framework that promotes universal service and accelerates nondiscriminatory access and open competition. Individual states can tailor their specific arrangements so that their needs are met while simultaneously playing an active role in shaping the national framework.

The Commission expressed concern that the states might not adopt the Commission's proposed informal model. As suggested by the Commission, these concerns could be addressed by the formation of an industry group that would focus on developing standards for the terms and conditions of interconnection contracts. Supplementing the informal model to include this

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17. FCC 95-505, para 52.

feature would be consistent with the approach taken in the Act of 1996 of an industry group voluntarily setting standards to promote interconnection. The Senate bill, which was adopted with minor modifications as section 256 of the Act of 1996, provides that [section 256] "permits the Commission to participate, in a manner consistent with its authority and practice prior to the date of enactment of this Act in the development of voluntary industry standards-setting organizations to promote interoperability." Joint Explanatory Statement of the Committee of Conferences, §256, p. 21.

Options 2 and 3, to the extent that they would adopt a mandatory policy framework or promulgate specific federal requirements for interstate and intrastate LEC-CMRS interconnection arrangements, effectively preempt state authority over the terms and condition of intrastate interconnection between LECs and CMRS providers.[18] These options in effect re-visit the issues of preempting state regulation "of the right to intrastate interconnection and the right to specify the type of interconnection" for commercial mobile service providers that were posed in GN Docket No. 93-252, *In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act*. NPRM at ¶70. The Commission based federal preemption on the conclusion that interconnection arrangements are inseverable between state and federal jurisdictions, and that differing state

18. As discussed herein, Congress expressly allowed states to retain jurisdiction over "other terms and conditions" in Section 332(c)(3)(A) of the Budget Act.

arrangements "would negate the federal purpose of ensuring interconnection to the interstate network." NPRM at ¶71.

In its comments, the CPUC respectfully disagreed and expressed its belief that preemption is unwarranted for a number of reasons, all of which are still valid. The CPUC believes that federal preemption is premature, and that there is no basis to conclude that all state interconnection arrangements applicable to intrastate mobile service providers necessarily negate interstate arrangements or otherwise conflict with federal goals underlying such arrangements. See Comments of the People of the State of California and the Public Utilities Commission of the State of California, pp. 8-11. The CPUC noted that states are in a position to require more favorable or efficient arrangements on behalf of the interconnecting mobile service providers thereby advancing, not undermining, federal goals. To the extent that state interconnection arrangements promote federal goals, they should be encouraged, not preempted.

B. The Commission Is Correct In Concluding that Section 332 Does Not Circumscribe State Regulation of the Interconnections that LECs Charge CMRS Providers.

The Commission seeks comment on whether it should reconsider its conclusion in a recent decision that Section 332 does not circumscribe state regulation of the interconnection rates that

LECs charge CMRS providers.[19] NPRM, ¶112. The CPUC agrees with BellSouth, which cited the recent decision, that there is no justification for Commission intervention in interconnection arrangements between LECs and CMRS providers. By the terms of Section 332, Congress intended to preempt only state regulation of the "rates charged by" mobile service providers, consistent with Congress' concern that rates charged by CMRS providers to the end users should not be subject to state regulation unless necessary to ensure just, reasonable and nondiscriminatory prices to end users:

> "Notwithstanding sections 2(b) and 221(b), no State or local government shall have any authority to regulate the entry of or the rates charged *by* any commercial mobile service...except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile service...."

(Budget Act, §332(c)(3)(A); emphasis added.)

At the same time, Congress authorized the states to have jurisdiction over "other terms and conditions" of commercial

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19. The Commission's conclusion was reached in *Petition on Behalf of the Louisiana Public Service Comm'n for Authority to Retain Existing Jurisdiction Over Commercial Mobile Radio Services Within the State of Louisiana*, 10 FCC Rcd 7898, 7908 (1995).

mobile service.[20] This provision attests to Congress' intent that there be dual regulation of CMRS. Congress expressed no intent to preempt the states from continuing to set interconnection rates designed to recoup switching and other costs of using facilities of the landline public switched network, or the facilities of the mobile service providers. The CPUC views such rates as simply access charges which state and federal regulators for years have set for intrastate and interstate interconnection of basic communications services, respectively, without impinging upon each other's authority.

Moreover, the Commission expressly declined to preempt state authority over intrastate LEC-to-CMRS interconnection rates. In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act, GN Docket No. 93-252, <u>Second Report and Order</u>, 9 FCC Rcd 1411 at ¶¶ 228, 231. This action is consistent with the Communications Act of 1934, as amended by §2(b) of the Budget Act, which places express jurisdictional limits on the Commission's power.[21]

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20. The legislative history of the Budget Act, as set forth in House Report No. 103-111, provides some examples of "terms and conditions" as including customer billing practices and billing disputes and other consumer protection matters, facilities siting issues, transfers of control, and the bundling of services and equipment. The list of examples is illustrative only, and is not intended to preclude other matters generally reasonably construed to fall under "terms and conditions."

21. Section 2(b) of the 1993 Budget Act generally reserves to the states jurisdiction over intrastate communication services by wire or radio by stating that: "[N]othing in this chapter shall

(Footnote continues on next page)

C. **The Budget Act Promotes Interconnection Without Preempting State Jurisdiction Over LEC-CMRS Interconnection.**

The Commission also seeks comment on the meaning and relevance of Section 332(c)(1)(B) of the Budget Act to its jurisdictional analysis (NPRM, ¶113). The CPUC believes that this provision acknowledges Congress' intent to promote interconnection to enhance competition:

> "Upon reasonable request of any person providing commercial mobile service, the Commission shall order a common carrier to establish physical connections with such service pursuant to the provisions of section 201 of this Act. Except to the extent that the Commission is required to respond to such a request, this subparagraph shall not be construed as a limitation or expansion of the Commission's authority to order interconnection pursuant to this Act."

In explaining its intent under this section, Congress made clear that "the right to interconnect [is] an important one which the Commission shall seek to promote, since interconnection serves to enhance competition and advance a seamless national network." House Report No. 103-111 at 261. The Commission also

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(Footnote continued from previous page)

be construed to apply or to give the Commission jurisdiction with respect to (1) charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service...."

recognized the public policy benefits of promoting interconnection to dominant, facilities-based carriers when it stated that "[a]s a general matter, we believe that the interconnectivity of mobile communications networks promotes the public interest because it enhances access to all networks, provides valuable network redundancy, allows for greater flexibility in communications, and makes communications services more attractive to consumers." Second NPRM at ¶28.

Promoting interconnection, however, is not synonymous with preempting state jurisdiction over LEC-CMRS intrastate interconnection. Congress clearly envisioned a dual regulatory system when it enacted the Communications Act in 1934, and most recently in 1996 when it passed into law an entire section mandating state involvement in the approval of interconnection agreements adopted by negotiation or arbitration.[22] Sections 251 and 252 carve out and strengthen the role of states in achieving nationwide interconnection as shown in discussions that follow.

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22. Section 252 of the Act of 1996 allows the states to be intimately involved in facilitating interconnection agreements, in determining just and reasonable rates for interconnection of facilities and network elements, and generally preserves state access regulations.

D. **The Act of 1996, By Preserving State Access Regulations, Evidences Congressional Intent That States Retain Jurisdiction Over Intrastate Interconnection.**

As a whole, the 1996 Act reinforces the importance of the states' role in effectuating the interconnection of LECs with CMRS providers. The CPUC believes that Section 252 reflects a tacit understanding that states are in the best position to monitor interconnection furnished by LECs to CMRS providers. It is also recognition that federal/state involvement and cooperation are necessary before universal service and regulatory parity can be achieved.

1. **Section 251**

The Act of 1996 makes it clear that the states play a major role in helping providers achieve the seamless network for which the Commission and the states are striving. Specifically, state access regulations are preserved by §251(d)(3) which provides in part that "the Commission shall not preclude the enforcement of any regulation, order, or policy of a State commission that (A) establishes access and interconnection obligations of local exchange carriers...." The Act of 1996 imposes directly on the LECs the duty to provide interconnection within the carrier's network at rates, terms and conditions that are just, reasonable and nondiscriminatory (§251(c)(2)). In addition, LECs are obligated to provide for physical collocation of equipment necessary for interconnection unless they demonstrate to the state commission that technical or space limitations prevent them from doing so. In that event, LECs must provide virtual collocation (§251 (c)(6)).

2. **Section 252**

Section 252 is particularly instructive in pointing out the importance of state involvement in the negotiation, arbitration, and approval of interconnection agreements. State approval is *required* for any interconnection agreement adopted by negotiation or arbitration (§252(e)).[23] States are given wide latitude in using state law or other standards or requirements in approving interconnection agreements:

> "[S]ubject to section 253 [entry requirements], nothing in this section [section 252] shall prohibit a State commission from establishing or enforcing other requirements of State law in its review of an agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements" (§252(e)(3)).

The continued ability of states to enforce service quality standards is not all inclusive. This statutory language, in conjunction with Section 253, makes it clear that state jurisdiction is retained in other areas, as well. These provisions reinforce the role of the states in facilitating

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23. States are expected to act. Only if they fail to carry out their responsibility in this area, shall the Commission issue an order preempting the state commission's jurisdiction regarding that matter within 90 days after being notified or taking notice of the state's failure (§252(e)(5) & (6).